

Letter of Comment No: 6
File Reference: FSP78U

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October 31, 2005

Susan Cospers
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Re: FAS 78

Dear Ms. Cospers:

My firm represents numerous not for profit long term care providers in New York State. I have acted as counsel in the start up, regulatory approval, development and financing of Continuing Care Retirement Community (CCRC) look-alike communities. I am Co-Chair of the Senior Living Community Subcommittee of the New York State Bar Association Real Property Section. I am also a trained accountant.

I am sending you this email memo to discuss the pending FASB treatment of the refund of entrance fee deposits by CCRC and CCRC look alike providers in the retirement community industry.

The proposed application of short term classification of entrance fee refund liability is not consistent with the actual practice and standards in the CCRC industry and may result in misstating the actual financial position of CCRC providers. Please consider the following points in addressing this issue:

1. Legally the entrance fee is treated as a component of rent paid for the right to occupy a particular residence in a senior living community. Leases

- are essentially for the lifetime of the resident. As long as the resident is obligated under the lease and remains in possession of a unit the resident has limited rights to cancel the lease. Typically residents must give 90 to 120 days advance written notice to cancel their residency and then pursuant to contract are not due a refund until the sooner of the release of a unit or 6 months after vacating a unit. In addition many communities have no obligation to refund until releasing the unit. For this very reason it is unlikely that any significant portion of entrance fees for an operating community would be due on a current basis. In the worst case scenario each and every resident within any given community would have to give notice of cancellation of their residency agreement within the first two months of the operating year in order for any significant portion of the entrance fee pool to be due in a current operating period. Current treatment of this liability item is not rational or factually grounded under the circumstances
2. The average resident age in New York State Communities is 79 to 81 years. Persons' in this age demographic do not change residences frequently with the average length of stay at a CCRC being 5 to 7 years in a fully mature community and 8 to 10 years in newly formed communities. Attrition from independent living residences is frequently due to health related reasons or death and not to discretionary factors. Residents incur an economic detriment by canceling a residency agreement given relocation needs combined with issues of aging and loss of socialization. This is an added factor to consider in categorizing the refundable entrance fees as short term obligations.
 3. CCRC communities are typically financed with 30 to 40 year tax exempt bonds. A standard covenant in many financings is the redemption of a significant portion of bond debt with first generation entrance fees. The accounting treatment therefore of refundable entrance fees is and should be more in keeping with long term debt. Funds utilized are applied to long term debt accordingly the classification of the refundable entrance fee should also be long term.
 4. Each CCRC project varies but most have entrance fee amortization which results in revenue to the CCRC provider. Rather than book this source of revenue as current CCRC operators are required to amortize the earnings over a minimum of 5 year period or resident life expectancy to reflect the average length of stay of a resident. Clearly the practice of currently categorizing debt yet favoring the long term treatment of revenue is contradictory and results in an incomplete and unbalanced financial snapshot of CCRC's as operating entities. Moreover this situation and accompanying accounting treatment is analogous to the capitalization of

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start up expenses rather than the expensing of start up project costs in the first year of operation. The same rationale should be accorded to refundable entrance fees in order to fairly present the financial position of CCRC providers.

5. The financial community generally recognizes entrance fees as stable sources of equity for CCRC communities and in calculating current ratios excludes the refundable entrance fee pool from the analysis. Those parties with the most concentrated risk of relying on the financial position of CCRC providers treat the refundable portion of entrance fees as long term obligations due to the totality of the circumstance. Accordingly the financial reporting standards would be in keeping with actual practice of the CCRC and financing industry.

Based upon the foregoing we respectfully request that the FASB Board determine that the CCRC and retirement community industry be exempt from application of FAS 78 and its related guidelines and interpretations.

Thank you for your consideration and deliberation of these important issues.

TOBIN AND GRIFFERTY, P.C.

/s/ Stephen J. Grifferty

Stephen J. Grifferty
sjg/gs